IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT APPEAL NO : 1900 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 17/09/2004 in WP NO : 5151 OF 1997 on the file of the High Court.)

Between:

B. Narsing Rao, S/o Late B. Rangaiah,
R/o Flat No. 103, Vishnu Sadan Apartments, 76, Shanthinagar, Hyderabad.

..... APPELLANT

AND

1 A.P.Khadi & Village Industries board,

rep. by the Chief Executive Officer,
Masab Tank, Hyderabad - 500 028.

2 State of Andhra Pradesh,

rep. by the Secretary to Government,
Small Scale Industries & Khadi & Village Industries Road, A.P. Secretariat, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant:MR.VL.N.G.KMURTHY

Counsel for the Respondent No.1 : Ms.Prasoona, Standing Counsel
Counsel for the Respondent No.2 : GP for Services-I

The Court made the following :

ORDER: (per P.S.Narayana.,J)

Heard the Counsel on record at length at the stage of admission of this Writ Appeal.

This Writ Appeal is preferred by the unsuccessful writ petitioner Sri B.Narsing Rao, aggrieved by the order dated 17-9-2004 made in W.P.No.5151/97.

Sri V.L.N.G.K. Murthy, the learned Counsel representing the appellant/writ petitioner had taken this Court through the respective pleadings of the parties and also the order which had been challenged in the present Writ Appeal and had pointed out that the 1st respondent resolved on 2-11-1994 and 2-3-1995 to request the Government to permit A.P. Khadi and Village Industries Board, hereinafter in short referred to as “Board” for the purpose of convenience, to pay regular scales to the in-charge Functional Managers and the Government did not respond. The Counsel would

maintain that in view of the fact that the Government had been shown as the 2nd respondent, separate counter affidavit should have been filed in view of the divergent stands taken by the respective parties. The learned Counsel pointed out that two counter affidavits substantially of the same nature were filed only by the Chief Executive Officer of the 1st respondent and hence there are no proper pleadings at all denying the allegations made in the affidavit filed in support of the Writ Petition. The Counsel also pointed out that the Chief Executive Officer is only an authority to implement the resolution of the Board. The learned Counsel also pointed out that the stand taken that as in-charge Functional Manager the appellant/writ petitioner was not discharging any additional duties is not a sustainable stand and the same is factually incorrect too. The Counsel pointed out that the resolutions passed by the Board requesting the Government to accord permission to fill up the vacancies of Functional Managers on in-charge basis would go to show that the appellant/writ petitioner is entitled to the said scales during the period in which he worked as in-charge Functional Manager. The Counsel also pointed out that the very fact that the Board requested the Government to permit payment of regular scales of pay itself would go to show that the appellant/writ petitioner was discharging the duties and responsibilities of a Functional Manager. The learned Counsel made certain submissions in elaboration

relating to the principle of equal pay for equal work and also had pointed out to the relevant portions of the order which had been questioned in the present Writ Appeal.

Per contra, the learned Government Pleader for Services-I, Sri K.Janakiram Reddy and Ms.Prasoona had taken this Court through the order made by the learned Single Judge and also had pointed out to the A.P. Khadi and Village Industries Board Employees (Recruitment and Service Conditions) Regulations, G.O.Ms.No.26, Industries & Commerce, dated 5-2-1996 which are hereinafter referred to as “Regulations” in short, made in exercise of the powers under Section 29 of the A.P. Khadi & Village Industries Board Act, 1958 (Act 4 of 1959) in short referred to as “Act” for the purpose of convenience, and had pointed out that these Regulations came into force subsequent to the retirement of the appellant/writ petitioner. The Counsel representing the respondents also had taken this Court through Sections 10, 14 and 29 of the Act and the relevant Regulations and had pointed out that in the light of the findings recorded by the learned Judge that the appellant/writ petitioner had not discharged any additional duties, responsibilities or functions and inasmuch as he was only an in-charge Functional Manager at the relevant time, and also in view of G.O.Ms.No.141, dated 6-3-1981, it cannot be said that the appellant/writ petitioner is entitled to any additional scale in view of the fact that he had functioned as in-

charge Functional Manager for some time. The learned Counsel also had pointed out to the additional counter affidavit and also the counter affidavit where substantially the same stand had been taken by the Chief Executive Officer.

The appellant/writ petitioner filed W.P.No.5151/97 praying for a writ, order or direction one in the nature of mandamus directing respondents to pay arrears of salary as per scale of pay attached to Functional Managers, Grade-II, from the date of his taking charge as Functional Manager and all consequential benefits with regard to leave salary, pension and gratuity, etc., and pass such other suitable orders. The learned Judge by order dated 17-9-12004 after considering the respective pleadings of the parties ultimately arrived at the conclusion that there are no merits in the Writ Petition and accordingly dismissed the same without costs. Aggrieved by the same, the present Writ Petition had been filed.

The learned Single Judge had recorded certain findings at para-9 as hereunder :

> “It is a fact that the Government sanctioned eleven additional posts of Functional Managers. In fact, the affidavit of the petitioner itself shows that these Additional posts are Development Officers to work as Functional Managers, may be with higher scale of pay. But, as long as the petitioner was not regularly promoted, he cannot claim the scale attached to the said post. Further, it is the contention of the respondents that the petitioner was not entrusted with any additional duties and responsibilities even after he was given in-charge of the Functional Manager post and he was discharging the same functions, which he was discharging as Development Officer.

When once there is no change in the duties and responsibilities which the petitioner was discharging prior to the in-charge arrangement, he cannot contract any benefit. In fact, the matter came up for hearing on earlier occasion and it was adjourned after hearing in order to ascertain whether the benefit of higher scale of pay was extended with reference to the other similarly placed persons, who are subsequently regularly promoted after framing of the Rules. On ascertainment, the learned Counsel for the petitioner reported that the scale of pay was not extended to those persons for the period for which they were holding the posts as in-charges. Therefore, there is no merit in the contention of the petitioner that he was discriminated. No doubt, some other persons, who were regularly promoted as Functional Managers might have been paid the scale of pay attached to those posts, but, the petitioner and others during the interregnum petitioner till the Rules are approved by the Government, were asked to hold the posts as In-charges. None of them were paid with the scale of pay attached to the said posts for that period. Therefore, there is no merit in the contention of the petitioner that he was discriminated when such benefit of higher scale of pay was not extended to any other person, who also held the post by way of in-charge. The petitioner was treated on par with others. Merely, because the petitioner retired immediately after the approval of the Rules and he could not get the benefit of regular promotion because of his retirement, he cannot claim that he was discriminated".

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The Board was constituted under the Act. Section 29 of the Act dealing with **Power to make Regulations** reads as hereunder :

1 . The Board may, with the previous sanction of the Government, by notification, make regulations, not inconsistent with this Act and the rules made thereunder, for enabling the Board to discharge its functions under this Act.

2 . In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

a. the terms and conditions of appointment and service and the scales of pay of the Chief Executive Officer and

other Officers and servants of the Board, including payment of traveling and daily allowance in respect of journeys undertaken by such officers and servants for the purpose of this Act;

b. the time and place of meetings of the Board, the procedure to be followed in regard to transaction of business at such meetings and the quorum necessary for the transaction of such business as at a meeting;

c. the delegation of powers and duties of the Board to the standing finance committee, the Chief Executive Officer or any employee of the Board.

d. the maintenance of minutes of meetings of the Board and the transmission of copies thereof to the Government.

e. the persons by whom and the manner in which payment, deposits and investments may be made on behalf of the Board.

f. the custody or moneys required for the current expenditure of the Board and the investment of moneys not so required.

g. the form in which and the scale of fees to be revised for granting the certificates of genuinness of khadi and Products of Village Industries may be granted by the Board and the procedure for the grant of such certificates.

h. the Government may, by notification, modify or rescind any regulation made and thereupon the regulation shall stand modified accordingly or shall cease to have effect, as the case may be.

SPECIAL PROVISION: Notwithstanding anything in the Principal Act the members of the Board holding offices at the commencement of this Act shall continue to hold their offices until new members are appointed under the provisions of Section 3 of the Principal Act, as amended by this Act, and enter upon their offices.

Section 10 dealing with **Officers and servants of the Board** reads as hereunder :

1. The Government shall appoint the Chief Executive Officer, the Financial Adviser and Chief Accounts Officer and Chief Executive Officer and other persons to fill the posts carrying equivalent scales of pay to those aforesaid either on deputation or otherwise.

2. The Chief Executive Officer shall be the principal Administrative Officer of the Board and shall exercise such powers and discharge such duties as may be prescribed or as may from time to time, be delegated to him by the Board or by the Chairman and shall be directly responsible for the due fulfillment of the purposes of this Act.

3. Subject to such rules as may be made by the Government in this behalf, the Board may with the prior sanction of the Government, appoint such other officers and servants as it may consider necessary for the efficient performance of its functions. All the officers and servants of the Board shall be subordinate to the Chief Executive Officer.

Section 14 of the Act dealing with **Power of Government to give directions** which may be relevant for the present purpose reads as hereunder:

> “In the exercise of their powers and in discharge of their functions under this Act, the Board and the Chief Executive Officer shall be bound by such directions as the Government may give to them.

Provided that any directions given by the Government to the Chief Executive Officer immediately before the commencement of Andhra Pradesh Khadi and Village Industries Board (Amendment) Act 1981, shall be deemed to have been given under this Section".

The post of Functional Manager is not one of the posts created under the Regulations initially and by G.O.Ms.No.38, Industries & Commerce dated 8-1-1975, a Committee headed by Sri S.R. Ram Murthy was constituted to consider the reorganization of the working of the Board and also to suggest various other measures. The recommendations were examined by a sub-committee of the Government at the Secretariat level and after examining the recommendations made by Sri S.R. Ram Murthy Committee, keeping in view the recommendations made by the sub-committee, the Government in G.O.Ms.No.141, dated 6-3-1981 accepted the recommendations aforesaid and the relevant portion of G.O.Ms.No.141, dated 6-3-1981 reads as hereunder :

"In the G.O. first read above, the Government constituted a Committee with Sri S.R. Rama Murthy, I.A.S., the then Secretary to Government, Industries and Commerce Department as Chairman to consider the reorganization of the working of the Andhra Pradesh Khadi and Village Industries Board, Hyderabad and also to suggest various measures necessary to improve its functioning and also to enable it to provide better employment opportunities to the Rural Artisans. The Committee after visiting Tamil Nadu and Maharashtra States and studying the working of the Khadi Boards of these States submitted a report to the Government containing in all 40 recommendations. These recommendations were examined by a Sub-Committee consisting of the then Secretary to Government, Industries and Commerce Department, Joint Secretary to Government, Finance and Planning Department and the Chief Executive Officer, Andhra Pradesh Khadi & Village Industries Board etc. The Sub-Committee had submitted its recommendations keeping in view the recommendations made by the earlier main Committee.

2. The Government have examined the recommendations made by Sri S.R. Rama Murthy Committee and keeping in view the recommendations made by the Sub-Committee have decided to accept them as detailed in the annexure to this order. The Chief Executive Officer, Andhra Pradesh Khadi & Village Industries Board is requested to implement the orders of the Government passed on these recommendations expeditiously.

3. The Government felt that there was definite increase in the developmental activities of the Board, which warrants strengthening of the staff of this organization both at Headquarters and at the field level. Keeping in view the recommendation made by Sri S.R. Rama Murthy Committee and the Sub-Committee referred to above, and the role to be played by the Andhra Pradesh Khadi & Village Industries Board in the rural reconstruction the Government accord sanction to the creation of the following additional posts for the Andhra Pradesh Khadi & Village Industries Board with the scales of pay indicated against each for a period of one year in the first instance from the date of filling up of the posts subject to the conditions laid down thereunder:

S.No.	Name of the post	Scale of pay	No. of posts Sanctioned
1.	Development Officer (to work as Functional Manager)	1050-40-12-50 1600-12-50-50-1800	11
2.	Accountants	700-30-1060-35-1200	22
3.	U.D. Clerks	530-15-590-20-800	15
4.	Typists	425-10-455-15-650	21
5.	Attenders	290-5-345-10-425	17
6.	Senior Inspectors	500-15-620-20-800	2
7.	Junior Inspectors	450-15-660-20-800	22

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8. Tahsildar 800-35-1010-40-1450 1

9. Revenue Inspectors 425-10-455-15-650 3

10.Typists 425-10-455-15-650 3

Taking into consideration the developmental activities of the Board for the purpose of strengthening the staff, additional posts were created by the proceedings dated 28-8-1989 of the Board and in para-2 I(1)(a) it was specified relating to Functional Managers, Grades I and II as hereunder :

> "As suggested by the Government, the qualifications prescribed for the post of Dy.Director/Asst.Director of Industries have been suitably modified and adopted.
>
> Since Functional Manager Grade-I is the highest post available for Board's employees, any person who will be directly recruited to this post will have no further avenues of promotions and consequently his pay will become stagnate and he will become frustrated in course of time. Hence it has been considered that provision for direct recruitment to this post need not be incorporated and the post may be filled up by promotion only.
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> For the post of Functional Manager Grade-II although provision has been made for direct recruitment, no quota for direct recruitment has been fixed since the number of posts in the Functional Manager Grade-II will be only few, the provision for direct recruitment made in the Regulations will be availed only when suitable qualified persons from the feeder categories are not available. Hence no direct recruitment quota for this post also has been made."

The resolution of the Board dated 25-1-1984 and also the letter of the Government dated 17-3-1988 had been referred to. It was specified

by the Government in letter No.7551/87-2 on 17-3-1988 not to fill up the posts of Functional Managers in future vacancies till the Regulations for the posts of Functional Managers were finalized. Several other details relating to vacancies also had been narrated.

The Board had submitted a draft resolution on 28-8-1989 to the Government which were pending finalisation with the Government and which came into force after the retirement of the appellant/writ petitioner. In the said circumstances, the Board requested the Government to permit the Board to fill up the posts of Functional Managers, Grade-II by making in-charge arrangements from among Senior Graduate Development Officers and the Government by proceedings dated 16-10-1992 after examining the request carefully and to avoid frustration among employees who did not get promotions since 5 or 6 years and also to have efficient Functional Managers Grade-II at the District Level permitted the Board to fill up the posts of Functional Managers Grade-II on in-charge basis only by selecting the senior graduate Development Officers and also to promote the employees as per cycle of promotion following the existing rules and regulations. The Chief Executive Officer in-charge of the Board by proceedings No.Entt/g1/65/92-6, dated 18-1-1993 ordered various promotions, postings and transfers pursuant to Board Resolution dated 2-1-1993 and by virtue of the same, the appellant/writ petitioner was permitted to work as in-charge

Functional Manager, Nellore District. It is stated that the appellant/writ petitioner is a double graduate (B.Com., LL.B.), a double Diploma Holder having passed Diploma in Banking and Diploma in French and passed Accounts Tests Part-I and II and stood senior in the cadre of Development Officers having practical experience of about 30 years in the field of Khadi and Village industries. As per the order aforesaid, the appellant/writ petitioner had taken charge as in-charge Functional Manager and worked in the capacity till retirement on 31-1-1996. The series of correspondence on which reliance was placed would go to show that the Board had been making a very serious attempt in this regard. The proceedings of the Chief Executive Officer of the Board dated 16-3-1995 and 14-9-1995 may be usefully referred to in this regard. The proceedings in D.O.Lr.No.Estt/G1/86/80, dated 16-3-1995 reads as hereunder :

> "I submit that the Government was requested in the reference 4th cited to promote the Senior Graduate Development Officers of the Board as Functional Managers in the applicable pay scale of Rs.3640/- to Rs.7580/-. I may also mention that the Government was pleased to sanction as far back as in 1981, 11 posts of Functional Managers vide G.O.Ms.No.141, dated 16-10-1981 in the pay of Rs.1,050/- - Rs.1600/-. This scale has been revised by the Government from time to time and at present a scale of pay Rs.3,640/- - Rs.7,580/- is applicable to the post of Functional Manager. All the 11 posts of Functional Managers were filled up by the Board by giving promotion to Senior Graduate Development Officers. Out of the 11 Functional Managers, 7 Functional Managers have already retired from service and a few more are in line. It is, therefore, very necessary to fill up all the vacant posts of Functional Managers by qualified Sr.Graduate Development Officers to provide them job satisfaction.

In the meantime the Board framed rules for all the categories of staff including the Functional Managers and Development Officers and sent to the Government for approval. These rules are pending approval from the Government for the last 6 years. The Government in their Lr.No.501/KVT/92-1, dated 16-10-1992 directed that promotions be given to staff upto the cadre of Development Officers and for the posts of the Functional Managers, which is the next immediate cadre, need be done with in-charge arrangements without giving the benefit of the scale of pay attached.

As most of the Development Officers are on the verge of retirement any action to give promotion to the Senior Graduate Development Officers is a positive decision without involving any additional expenditure to the Board. There will be also no further additional commitment of expenditure to the Government on account of these promotions as these posts were sanctioned in 1981 itself.

I also submit that extension of the facility of promotion to the senior Graduate Development Officers as was given to the Feeder Category of the Development Officers by the Government will facilitate better motivation and functional efficiency amongst the staff for achieving the tasks given to the Board. The Board, therefore, in its meeting held on 2-3-1995 resolved to request the Government for extension of this benefit to the Senior Graduate Development Officers as a beneficial measures to enhance the efficiency of the staff. (copy of the resolution is enclosed).

I request the Government to issue appropriate early orders in the matter."

The proceedings in D.O.Letter No.Estt/G1/65/92, dated 14-9-1995 of the Chief Executive Officer of Board reads as hereunder :

"May I invite your attention to the correspondence cited (copy enclosed). The Government in their letter No.501/KVI/92-1, dated 16-10-1992 was pleased to permit the Board to fill up the post of Functional Manager on Incharge basis by selecting the graduate senior Development Officers basis to promote the employees as per cycle of promotion following the existing

Rules & Regulations. Accordingly, the Board has filled up the posts by promoting the employees as per the existing rules, while this is so the Senior Development Officers were posted to work as Functional Manager Incharge only.

The Board has already sent the revised Recruitment Regulations to the Government in the year 1989 as per the directions of the Government vide this office Letter No.Estt/86/G1/80 dated 28-8-1989. The approval of the Government is awaited since then.

The Functional Manager Incharge have been represented frequently to extend the pay scale of the post of Functional Manager to them.

It may be mentioned that these Incharge Functional Managers have been functioning for the last three years in their own pay scale of Development Officers. The Incharge arrangements were made duly going through the normal procedure for regular promotions i.e., placing their cases before appointment and Services Committee and on the recommendations of the Appointment & Services Committee appointments of these Incharge Functional Managers were made. Many of these Incharge Functional Managers will be retiring very shortly. If these Incharge arrangements are not converted into at least adhoc appointments giving pay scales of Functional Manager, many Functional Managers will retire without getting even the retirement benefits. It is, therefore, requested that the service regulations already sent to the Government may kindly be approved so that they can be published. In the meantime, in order to avoid hardships to the Incharge Functional Managers, their Incharge arrangements may be permitted to be converted into at least adhoc appointment as Functional Managers Grade-II duly giving pay scale of Functional Manager Grade-II pending finalisation of the Service Regulations."

In this context strong reliance also was placed on Resolution shown as Item No.10 i.e., "Any other item with the permission of Chair" in the minutes of the Board meeting held on 2-11-1994 of the Board and the said Resolution reads as hereunder :

"The Vice-Chairman has raised the subject pertaining to non-

providing of a scale of pay of Functional Manager to the Officers who are already working as Functional Manager I/c.The Chief Executive Officer has explained that as per G.O. they were not permitted to appoint as regular Functional Managers the pay scales have not been permitted to be drawn. It was, therefore, resolved to address the Government to permit the Board to pay them in the pay scale of Functional Managers from the date of taking charge irrespective of the rules implemented by the State Government.

Sri Karunakaran, Member and the Vice-Chairman had raised the subject of recovery and the need to strengthen the recovery work. It was resolved to depute 2 officers from the Head Office to assist the District Officers in the recovery."

Reliance also was placed on the Board Resolution under "Any other item with the permission of the Chair" of the minutes of the Board meeting held on 2-3-1995 at 11 a.m. which reads as hereunder :

"The subject pertaining to extending the pay scale of Functional Manager to the Officers who have been promoted as Functional Manager I/c. has been discussed at length. The Board has resolved to address the Secretary, Industries Department through a D.O. letter from the Chief Executive Officer for the extension of pay scale to the Functional Manager once again by allowing the same concession as extended to the feeder categories of Development Officers in the Government letter No.501/KVI/92-1, dated 16-10-1992."

Strong reliance was placed on these Resolutions and submissions at length were made in this regard.

Regulations dated 5-2-1996 were made in exercise of the powers under Section 29 of the Act and in Annexure-II the Method of recruitment and qualifications to the posts in the Board had been indicated. Sl.No.1(1)(c) and Several.No.6(2)(c) relate to Functional Manager (Rs.3640-7580) and Development Officer (Rs.2750-5960)

respectively. The Method of Recruitment to the post of Functional Manager is shown as hereunder :

i. By promotion from the category of Establishment Officer/Statistical and Information Officer/Development Officer.

ii. By direct recruitment.

The qualifications prescribed for recruitment to the post of Functional Manager by Promotion from the category of Establishment Officer/Statistical and Information Officer/Development Officer are as hereunder :

A) Degree in Engineering/Arts/Commerce/Science.

B) Pass in Accounts Tests for Subordinate Officers Part-I is compulsory and Part-II or Accounts Test for Executive Officers.

C) Shall have successfully completed probation in the lower category and shall have completed three years of continuous service in that category.

The qualifications prescribed for recruitment to the post of Functional Manager by Direct Recruitment are as hereunder :

"A degree in Engineering/M.Com. of a University in India established or incorporated or under a Central/State Act with Post Graduate Diploma in Rural Development and Management or MBA of a recognized Institution with a Post Graduate Diploma in Rural Management."

Likewise, for the post of Development Officer, the method of recruitment is shown to be by promotion from the category of

Superintendent and Assistant Development Officer, and by Direct recruitment. The qualifications for the post of Development Officer by promotion as aforesaid are as hereunder :

a. From among those in category 3A(i) and (C) of Annexure-I and having a degree in Engineering or a degree in Arts, Science or Commerce of a University in India established or incorporated by or under a Central/State Act.

b. Should possess practical experience for not less than two years in the development of Khadi Village Industries or should have undergone training in any one or more of the Industries falling within the purview of the Board's developmental activities in any well established institution recognized by the Khadi Commission or Diploma in Rural Development.

c. Should have passed Accounts Test for Executive Officers or Part-I and Part-II of the Accounts Test for Subordinate Officers conducted by the APPSC.

d. Shall have successfully completed probation in the lower category and have completed three years of continuous service in that category.

By direct recruitment to the post of Development Officer, the following are the qualifications prescribed :

> "A degree in Engineering/CA/M.Com./MBA in India established or incorporated by or under a Central/State Act. Preference will be given to those with experience in rural management."

It is needless to say that these Regulations came into force after the retirement of the appellant/writ petitioner.

An additional counter affidavit was filed sworn to by the In-charge Chief Executive Officer and yet another counter affidavit was filed by the Chief Executive Officer. The stand taken in both the counter affidavits appears to be substantially the same. It is no doubt true that the Government had not filed any separate counter affidavit. But however the fact remains that even the Chief Executive Officer had narrated the facts in detail. It is not in controversy that the final authority as per the provisions of the Act to take a decision in this regard is the Government and the recommendations made by the Board may be considered by the Government and may be accepted or may not be accepted and since the Government being the final authority the Government may take into consideration several aspects while adopting the recommendations in toto or accepting the recommendations only in part, as the case may be. In the counter affidavit it was pleaded that the Government was pleased to sanction 117 additional posts in G.O.Ms.No.141, Industries & Commerce (V.I) Department dated 6-3-1981. Among 117 additional posts there are 11 posts of Development Officers (to work as Functional Manager) in the pay scale of Rs.1050-1600 and Rs.1250-1800. It was directed under condition II of the above G.O. that the existing personnel working in the Board as far as possible be appointed against the additional posts now created provided they are qualified and eligible and in respect of remaining posts they should be filled up either by

resorting to deputation of qualified and experienced personnel from Industries Department or by recruiting candidates directly open. In this regard it was submitted that there were no Recruitment Regulations for the post of Development Officer to work as Functional Manager in the Recruitment Regulations 1979. The Board had filled up 11 posts of Development Officers to work as Functional Managers Grade-II by promoting the Development Officers working in the Board vide Office Pro.No.Estt/G1/84-1, dated 23-3-1984 by virtue of G.O.Ms.No.141, Industries and Commerce Department, dated 6-3-1981. The Government in their Letter No.75/VI/87-2, dated 17-3-1988 directed the Board by virtue of power under Section 14 of the Act not to fill up the post of Functional Manager in future vacancies till the Regulations for the post of Functional Manager are finalized and issued. The Board sent the draft Recruitment Regulations for the post of Functional Manager along with other amendments to the Recruitment Regulations 1979 to the Government for their approval through Lr.No.Estt/86/G1/80, dated 28-8-1989. In the meanwhile the Board requested the Government to permit the Board to fill up the Posts of the Functional Managers by in-charge arrangement with Senior Development Officers since the Regulations proposed are yet to be approved. The Government have in turn in their letter dated 16-10-1992 permitted to fill up the post of Functional Manager Grade-II on in-charge basis only by selecting the senior Graduate

Development Officers. Accordingly, the posts of Functional Managers were filled up by posting Development Officers as Functional Managers in-charge by proceedings dated 18-1-1993. The appellant/writ petitioner as one of them was posted as Functional Manager, in-charge Nellore Branch as he was working as in-charge with effect from 18-1-1993 and he retired on the afternoon of 31-1-1996. As such he cannot claim benefit of G.O.Ms.No.141, Industries and Commerce Department, dated 6-3-1981 and subsequent revision in the pay scales of Functional Manager. The petitioner was neither promoted as Functional Manager nor entrusted with higher responsibility but was posted as Functional Manager in-charge only with same duties and responsibilities attached to the post of Development Officer and therefore he is not entitled to any pay scale of the post of a Functional Manager. Subsequently in G.O.Ms.No.26, dated 29-1-1996 the Government had issued the Regulations afresh in supercession of previous regulations. These Regulations which includes the post of Functional Manager have come into force on 5-2-1996. Since the petitioner retired from service on 31-1-1996, well before the new Regulations came into force, the same obviously were not made applicable to the appellant/writ petitioner.

The facts are not in controversy. The only question which had been argued at length by the Counsel on record is relating to the concept

of equal pay for equal work and the writ petitioner/appellant is entitled for the relief of scale of pay attached to the post of a Functional Manager. As already referred to supra, the learned Single Judge had recorded a finding to the effect that on ascertainment the learned Counsel for the petitioner had reported that the scale of pay was not extended to those persons for the period for which they were holding the post as in-charges and a finding also had been recorded relating to Functional Managers regularly promoted and the in-charge Functional Managers. The principle of equal pay for equal work was enunciated as part of the Directive Principles of State Policy in Article 39(d) of the Constitution of India. In **RANADHIR SINGH Vs. UNION OF INDIA** it was held that this is a Constitutional goal and this principle may have to be read with the fundamental rights enshrined in Articles 14 and 16 of the Constitution of India. These principles had been reiterated in **DHIRENDRA CHAMOLI Vs. STATE OF U.P. , JAIPAL Vs. STATE OF HARYANA , FEDERATION OF ALL INDIA CUSTOMS AND CENTRAL EXCISE STENOGRAPHERS (RECOGNISED) Vs. UNION OF INDIA , STATE OF UTTAR PRADESH Vs. CHAURASIA , HARBANS LAL Vs. STATE OF HIMACHAL PRADESH** and **GHAZIABAD DEVELOPMENT AUTHORITY Vs. VIKRAMCHAUDHARY .** I n **STATE OF TAMIL NADU Vs. M.R. ALAGAPPAN** at para-13 it was held :

> “Keeping in view the aforesaid settled legal position, therefore, it has to be seen whether the Deputy Agricultural Officers and

the Agricultural Officers can be said to form an identical class of employees who must be given the same pay scales and denial of which can be said to offend Article 14 and 16 of the Constitution of India. In the light of the well established facts on the record of these cases, to which we have made a reference earlier, it is impossible to hold that the Deputy Agricultural Officers like the contesting respondents are required to be given the same pay scale as Agricultural Officers. Reasons are obvious. They do not form a similar class of employees even though they may be substantially discharging the same type of duties and their place of work may be interchangeable. A glaring difference which results into making them fall in a distinct and separate category of employees deserves to be kept in view. In the first place the contesting respondents are recruited by promotion from the lower category of Assistant Agricultural Officers. On promotion as Deputy Agricultural Officers they remain non-gazetted employees in the subordinate service in the Tamil Nadu Agricultural Extension Subordinate Service while the Agricultural Officers are directly recruited to a gazetted service called Tamil Nadu Agricultural Extension Service. The contesting respondents are promoted departmentally while the Agricultural officerrs are directly selected through Tamil Nadu Public Service Commission. The minimum educational qualification for being an Agricultural Officer (direct recruit) is B.Sc. (Agriculture) while for a promotee-Depty Agricultural Officers the minimum educational qualification is SSLC with suitable diploma as laid down by the Rules. Though substantially the carry out the same type of work and duties, important assignments are exclusively entrusted to Agricultural Officers as seen from para 5 of the additional affidavit filed by Shri V. Srinivasan, Deputy Secretary to Government at page 193 of the paper book, as noted earlier. The special duties which can be entrusted only to Agricultural Officers are listed as under:

(a) draw samples of Insecticides

(b) draw samples of fertilizers

(c) draw seed samples

(d) analyse the soil water samples

(e) work in the Regional Research Station

(f) work in the State Seed Farm

(g) work in the Laboratories

(h) do soil survey work

(i) can be appointed in delta areas.

Of course learned counsel for the contesting

respondents submitted that in certain circumstances even the task of drawing samples is also being entrusted to Deputy Agricultural Officers. That may be so. But the special quality of work which the directly recruited Agricultural Officers have to put in substantially differs from the quality of work which can be entrusted to Deputy Agricultural Officers like the contesting respondents. As noted earlier out of the total posts of Agricultural Officers under the Agriculture Department of the appellant-State only 1018 posts can be made available for Deputy Agricultural Officers on interchangeable basis. 1372 posts are exclusively meant to be manned by directly recruited Agricultural Officers. In view of these distinguishing features between the two groups of employees and especially in the light of the further fact that from two separate cadres of gazetted and non-gazetted officers governed by different sets of service rules which in turn required maintenance of separate seniority lists, and on which aspect also there was no dispute between the parties, it is not possible to agree with the contention of learned counsel for the contesting respondents that only on the doctrine of Equal Pay for Equal Work the pay scale available to gazetted employees like Agricultural Officers must of necessity be made available to non-gazetted employees like Deputy Agricultural Officers on the pain of Articles 14 and 16 of the Constitution of India. In our view the Tribunal had patently erred in applying the said doctrine to the facts of the present cases. The decision of the Tribunal amounts to giving equal treatment to totally distinct and equal categories of employees. The common judgment of the Tribunal, therefore, cannot be sustained."

In **STATE OF HARYANA Vs. JASMER SINGH** it was held :

"The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay-scale of the regularly employed.

The High Court was, therefore, not right in directing that the respondents should be paid the same salary and allowances as are being paid to regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wage is prescribed for such workers, the respondents would be entitled to it if it is more than what they are being paid."

I n **UNION OF INDIA Vs. PRADIP KUMAR DEY** the Apex Court observed :

"The Division Bench of the High Court allowed the appeal filed by the respondent stating that admittedly the respondent was performing more hazardous job; the Radio Operators in CRPF were not only performing similar nature of duties as that of Radio Operators of the Central Water Commission or the Directorate of Police Wireless but they were also performing more hazardous duties. The appellants appreciating the nature of work made recommendations before the Pay Commission for higher pay scale but after the Pay Commission turned down the same they have come forward with a different stand; the appellants cannot take conflicting stands – one before the Pay Commission and the other before the Court. The Pay Commission's recommendations were not binding on the Government. They ought to have taken decision on merits. On this basis the Division Bench gave directions as already stated above.

In our considered view the Division Bench of the High Court was not right and justified in straight away giving direction to grant pay scale to the respondent when there was no material placed before the Court for comparison in order to apply the principle of "equal pay for equal work" between the Radio Operators of CRPF and the Radio Operators working in civil side in the Central Water Commission and the Directorate of Police Wireless. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training, required responsibilities undertaken and other facilities in addition to pay scales, the learned single Judge was right when he stated in the order that in the absence of such material it was not possible to grant relief to the respondent. No doubt, the Directorate of CRPF made recommendations to the Pay Commission for giving higher pay scales on the basis of which claim is made by the respondent for grant of scale. The factual statements contained in the recommendation of a particular Department

alone cannot be considered per se proof of such things or they cannot by themselves vouch for the correctness of the same. The said recommendation could not be taken as a recommendation made by the Government. Even otherwise a mere recommendation did not confer any right on the respondent to make such a claim for writ of mandamus."

The decisions in **CHIEF CONSERVATOR OF FORESTS Vs. JAGANNATH MARUTI KONDHARE** and **STATE OF HARYANA Vs. PIARA SINGH** also may be referred to in this regard. The principles laid down in the decision referred (11) supra had been applied in **GUJARAT AGRICULTURAL UNIVERSITY Vs. RATHOD LABHU BECHAR** and **STATE OF ORISSA vs. BALRAM SAHU .** In **UNION OF INDIA Vs. G.K. MURTHY** one of us (G.Bikshapathy.,J) while dealing with a similar fact situation in a slightly different context speaking for the Division Bench held at para-15:

"From the aforesaid discussion and the reasons assigned by the Government, it is seen that the Doordarshan has two categories of posts only with the editing unit, while in the Films Division, it has four different categories. On that basis, the Government found that no comparison could be made in respect of these posts even in respect of essential qualifications for direct recruitment posts are concerned, and found that there was no parity. Therefore, from the reasons assigned by the Government, it cannot be said that the said reasons are arbitrary or unreasonable. When once the Government found that the comparison is not feasible of acceptability as the set up in the Doordarshan in editing unit is different than the set up in the Films Division and also their qualifications and recruitment process is different. Can it be said that still the Tribunal can go into the reasonableness of the reasons assigned by the Government. It is one thing to say that there were no reasons, but it is another thing to say that the reasons are arbitrary and perverse. Government found that it is not a fit case for accepting the recommendations of the High Power Committee. Though in the normal course, the

recommendations of the Higher Power Committee are to be given proper weightage, but it does not mean that the Government is under obligation to accept and cannot disapprove the recommendations. The recommendations of the High Power Committee are only of a persuasive value, but it cannot be said that they are totally binding on the Government. It is always open for the Government to refuse or to accept the recommendations and pass appropriate orders in regard to the pay scales also. The Supreme Court in catena of judgments has held that normally the recommendations of the Expert Committee have to be accepted, but in the instant case, the Expert Committee was constituted by the Government of India itself and the Government has every right to consider whether the recommendations are to be accepted or not to be accepted. While not accepting the recommendations, the Government has given reasons establishing that the parity cannot be maintained between the Doordarshan editing unit and the Films Division Unit. In such a situation, it would not be appropriate for the Tribunal to again scan those reasons and to hold that the reasons assigned by the Government are unreasonable and improper. It is to be noted that the Courts do not have any technical expertise and the Government is the final authority in type of decisions and in the absence of such an expertise and skill, it is inappropriate on the part of the Courts to interfere with the decisions taken by the Government in respect of parity of scales on the basis of equal pay to equal work. The Tribunal has completely relied on the recommendations of the Expert Committee holding that the Expert Committee has gone in depth of the situation and such a recommendation ought to have been accepted by the Government of India. But the Tribunal failed to consider that the Government is the highest body in the hierarchy of the administration and it has power to accept or reject the recommendations of the committee. While refusing to accept the recommendations, the Government had given reasons which cannot be said to be totally irrelevant or extraneous to the matter in issue nor can it be said that the reasons are perverse. The difference in educational qualifications, experience and hierarchial set up of respective units in Doordarshan and Film Division being different, the denial of parity scales cannot be said to be unsustainable. In those circumstances, keeping in view the judgments of the Supreme Court, as referred to by the learned Standing Counsel of the Central Government, we hold that the Tribunal has committed an error in allowing the application filed by the employees. Accordingly, we declare that the order of the Tribunal is not

sustainable and accordingly, it is set aside and the O.A. stands dismissed."

In the light of the legal position which had been discussed supra and also taking into consideration the findings recorded by the learned Single Judge while dismissing the Writ Petition and also in view of the fact that G.O.Ms.No.141 refers to only in-charge Functional Managers and the appellant/writ petitioner retired even prior to the Regulations coming into force and in view of the fact that the Government being the final authority to take a final decision in this regard, the resolutions, recommendations or the correspondence made by the Chief Executive Officer of the Board in this regard may not alter the situation in any way and in this view of the matter the principle of equal pay for equal work may not be extended while deciding the question of parity of scales in this context. Hence, viewed from any angle, the appellant/writ petitioner is not entitled to the relief prayed for and hence the findings recorded by the learned Single Judge are hereby affirmed.

Consequently the Writ Appeal shall stand dismissed as being devoid of any merit. No order as to costs.

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Justice G.Bikshapathy

_____

Justice P.S.Narayana

Date : -2-2005

L.R. copy to be marked : YES / No

AM

To:

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One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1. Chief Executive Officer,

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4. 2 C.Cs. to Standing Counsel for

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